

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:03

PLR-123614-08

Date:

September 11, 2008

Distributing =

Controlled =

Business =

Shareholder A =

Shareholder B =

Trust =

c =

d =

Date E =

Employee X =

Dear _____ :

We respond to your request dated May 15, 2008, for rulings on the Federal income tax consequences of a proposed transaction. Additional information was provided in a letter dated August 6, 2008. The information submitted for consideration is summarized below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This Office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process. Moreover, no information provided by the taxpayer has been reviewed and no determination has been made regarding whether the proposed transaction: (i) satisfies the business purpose requirement of §1.355-2(b) of the Income Tax Regulations, (ii) is used principally as a device for the distribution of the earnings and profits of any distributing corporation or controlled corporation (see §355(a)(1)(B) of the Internal Revenue Code and §1.355-2(d)), and (iii) is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in any distributing corporation or controlled corporation (see §355(e)(2)(A)(ii) and §1.355-7).

Distributing files a consolidated Federal income tax return with its wholly owned subsidiary, Controlled. Both Distributing and Controlled are directly engaged in Business. Distributing and Controlled each have one class of stock issued and outstanding.

The Distributing shares are owned by Shareholder A (c %) and Trust (d %). The shares held by Trust had been owned by Shareholder B until his death on Date E. Prior to the transaction described below, Trust will distribute the Distributing shares, which may be subject to an estate tax liability, to Shareholder A. Accordingly, Shareholder A will own all of the outstanding shares of Distributing. Distributing anticipates that if the Distributing shares are subject to an estate tax liability, then, in order to pay the estate tax liability, a portion of the Distributing stock will be redeemed in a §303 redemption.

Financial information has been received that indicates that Business conducted by Distributing and Controlled each has had gross receipts and operating expenses representative of the active conduct of a trade or business for each of the past five years.

For what are represented to be valid business purposes, Distributing proposes to distribute pro rata all of its Controlled stock to Shareholder A (the "Distribution"). No property will be transferred by Distributing to Controlled in anticipation of or in connection with the transaction.

The following representations have been made in connection with the proposed transaction:

- (a) No part of the consideration to be distributed by Distributing will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing.
- (b) The five years of financial information submitted on behalf of Distributing is representative of its present operations, and with regard to Distributing, there have been no substantial operational changes since the date of the last financial statements submitted.
- (c) The five years of financial information submitted on behalf of Controlled is representative of its present operations, and with regard to Controlled, there have been no substantial operational changes since the date of the last financial statements submitted.
- (d) Following the transaction, Distributing and Controlled will each continue the active conduct of its business, independently and with its separate employees, except that Employee X will perform certain services for both Distributing and Controlled for an interim period.
- (e) The Distribution is being carried out for the following corporate business purposes: maintaining economic separateness for the reduction of risk, increasing the borrowing capacity of each corporation, and streamlining business operations and financial matters. The Distribution is motivated, in whole or substantial part, by one or more of these corporate business purposes.
- (f) The Distribution is not used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both.
- (g) There is no acquisition of stock of Distributing or Controlled (including any predecessor or successor of any such corporation) that is part of a plan or series of related transactions (within the meaning of §1.355-7) that includes the distribution of the Controlled stock.
- (h) No intercorporate debt will exist between Distributing and Controlled at the time of, or subsequent to, the Distribution.

- (i) Immediately before the Distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations. Further, Distributing's excess loss account (if any) with respect to the Controlled stock will be included in income immediately before the Distribution.
- (j) Payments made in connection with all continuing transactions, if any, between Distributing and Controlled will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (k) For purposes of §355(d), immediately after the Distribution, no person (determined after applying §355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing stock, that was acquired by purchase (as defined in §355(d)(5) and (8)) during the five-year period (determined after applying §355(d)(6)) ending on the date of the Distribution.
- (l) For purposes of §355(d), immediately after the Distribution, no person (determined after applying §355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled stock, that was either (i) acquired by purchase (as defined in §§355(d)(5) and (8)) during the five year period (determined after applying §355(d)(6)) ending on the date of the Distribution or (ii) attributable to distributions on Distributing stock that was acquired by purchase (as defined in §§355(d)(5) and (8)) during the five year period (determined after applying §355(d)(6)) ending on the date of the Distribution.
- (m) Immediately after the transaction (as defined in §355(g)(4)) neither Distributing nor Controlled will be a disqualified investment corporation (within the meaning of §355(g)(3)).

Based solely on the information submitted and on the representations set forth above, we rule as follows:

- (1) No gain or loss will be recognized by Distributing upon the distribution of its stock in Controlled to Shareholder A (§355(c)).

- (2) No gain or loss will be recognized by (and no amount will be included in the income of) Shareholder A on the receipt of Controlled stock (§355(a)(1)).
- (3) The aggregate basis of the Distributing and Controlled stock in the hands of Shareholder A immediately after the Distribution will be the same as the aggregate basis of the Distributing stock in the hands of Shareholder A immediately before the Distribution, allocated between the Distributing and Controlled stock in proportion to the fair market value of each in accordance with § 1.358-2(a)(2) (§ 358(a), (b) and (c)). Because the Distributing stock held by Shareholder A immediately before the transaction may have different bases (e.g., shares of stock were acquired at different times and at different prices), the bases of the Distributing blocks of shares will be allocated between the Distributing blocks and Controlled blocks (block by block allocation).
- (4) The holding period of the Controlled stock in the hands of Shareholder A will include the holding period of the Distributing shares with respect to which the shares are received, provided the Distributing shares are held as capital assets by Shareholder A on the date of the Distribution (§1223(1)).
- (5) As a result of the Distribution, earnings and profits will be allocated between Distributing and Controlled in accordance with to §§312(h), 1.312-10(b), and 1.1502-33(e).

No opinion is expressed about the tax treatment of the proposed transaction under other provisions of the Code or regulations or the tax treatment of any conditions existing at the time of, or effects resulting from, the proposed transaction that are not specifically covered by the above rulings. In particular, no opinion is expressed regarding: (i) whether the Distribution satisfies the business purpose requirement of §1.355-2(b); (ii) whether the proposed transaction is used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (see §355(a)(1)(B) and §1.355-2(d)); and (iii) whether the Distribution and an acquisition or acquisitions are part of a plan (or series of related transactions) under §355(e)(2)(A)(ii).

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

Ken Cohen
Senior Technician Reviewer, Branch 3
Office of Associate Chief Counsel (Corporate)